IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. M.P. No.785 of 2012
in
Cr. Appeal No.339 of 2004.

Decided on: 21st May, 2013.

Sushil Kumar alias Shashi.

…. Petitioner.

Versus

State of Himachal Pradesh.

.. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] Yes.

For the petitioner:	**Mr. Anoop Chitkara, Amicus Curiae.**
For the State-respondent:	**Mr. P.M. Negi, Deputy Advocate General.**

SURINDER SINGH, J ***(Oral)***

The instant petition, addressed to the Hon'ble Chief Justice by convict Sushil Kumar alias Shashi, undergoing sentence in two different cases, received through Superintendent Jail, was ordered to be taken-up on judicial side. Shri Anoop Chitkara, Advocate, vide order dated 13.9.2012, was appointed as Amicus Curiae to assist the Court.

2. We have heard learned Amicus Curiae and learned Deputy Advocate General.

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[1] Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

3. The proposition raised before us is whether a direction can be issued by this Court while exercising the powers under Section 482 of the Code of Criminal Procedure to order the sentences already passed and upheld in appeal in two different cases, to run concurrently?

4. In short, the facts are that the petitioner aforesaid was charge-sheeted and convicted by the learned trial Court for attempt to murder and trespass, thus sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹.10,000/-, for the offence punishable under Section 307 of the Indian Penal Code and rigorous imprisonment for five years and to pay a fine of ₹.5,000/- under Section 452 of the Indian Penal Code with his co-accused and also to pay a compensation to the tune of ₹.30,000/-. All the sentences were ordered to go consecutively. Feeling aggrieved by this judgment, they filed Criminal Appeal No.339 of 2004, which was dismissed by the Division Bench of this Court on 8.8.2007, wherein there was no challenge or submission to the above sentences to run concurrently. The incident pertained to the year 2000. It was a brutal attack with sharp-edged weapons on Dinesh Kumar injured causing

amputation of thumb and a bone deep laceration of his scalp.

5. Whereas in another case Sushil Kumar petitioner was tried, convicted and sentenced for life for the offence of murder of Anil Kumar on 6.3.2004 alongwith co-accused, against which he filed Criminal Appeal No.331 of 2006, which was decided on 13.10.2009, whereby the conviction was converted to an offence punishable under Section 304 Part-I of the Indian Penal Code. Consequently, the appeal was partly accepted. He was thus sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹.5,000/-. In default of payment of fine to further undergo rigorous imprisonment for a period of one year. In this appeal it was not brought to the notice of the Court that he stood already convicted and sentenced in another case as aforesaid.

6. Now the convict prays that both these sentences passed in the above two cases be ordered to be undergone by him concurrently so that he may have a chance to live a normal life after completing the sentence.

7. In fact, sentencing is one of the most important facets of administration of criminal justice system. Apart from statutory restrictions, an appropriate sentence is a matter for the discretion

of the sentencing Judge. How this discretion is to be exercised would primarily be a matter depending upon the facts and circumstances of a given case. The Court has to exercise its discretion guided by law and legal principles. It must be governed by rules, not by humour and cannot be arbitrary, vague and fanciful. It essentially has to be legal, regular and according to the rules of reason and justice. Once the parameters contained in Section 427 of the Code are satisfied, the competent Court is then required to exercise its discretion to pass appropriate orders in relation to the sentence awarded in a subsequent conviction, should run concurrently or consecutively with the previous imprisonment. The terms of Section 427 of the Code contained proper exercise of discretion which is inbuilt command that it should be exercised appropriately and in consonance with the settled guidelines which cannot be enlarged in its scope.

8. Section 427 of the Code of Criminal Procedure confers discretionary power on the Court to direct the sentence of imprisonment on a subsequent conviction to run concurrently with the previous sentence, if the accused is already undergoing a sentence of imprisonment.

9. Section 427 of the Code reads as under:

> **"427. Sentence on offender already sentenced for another offence**.-
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> **(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence;**
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> **Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.**
>
> **(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."**

10. A perusal of the above Section makes it clear that the power which is given under this provision of the Code has to be exercised at the time of awarding subsequent sentence by the trial Court but it is not obligatory and undisputedly it can also be exercised by the High Court while dealing with appeal or revision.

11. Incidentally, the question arises as to whether in absence of appeal or revision the

direction sought for can be given by the High Court by invoking inherent powers available under Section 482 of the Code?

12. Their Lordships of Supreme Court in **Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatt**i v. **Assistant Collector of Customs (Prevention), Ahmedabad and another, [(1988) 4 SCC 183],** while taking note of Section 427 of the Code of Criminal Procedure observed that the crime committed by the accused is relevant for measuring the sentence, but the maximum sentence awarded in one case against the same accused should also be kept in mind while awarding the consecutive sentence in the second case although it is grave. The Court has to consider the totality of the sentences which the accused has to undergo if the sentences are to be consecutive. The totality principle has been accepted as correct principle for guidance. In para 10, the Supreme Court observed as under:

> ***"The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences***

is not the same or the facts constituting the two offences are quite different."

13. In **M.R. Kudva** v. **State of A. P. [(2007) 2 SCC 772]**, the Supreme Court while taking note of Section 427 of the Code of Criminal Procedure held that when the provision of this Section is not involved in the original cases or in appeals such an application/ petition thereafter is not maintainable and the High Court has no jurisdiction to entertain such a request. The said provision cannot be applied in a separate and independent proceeding. The reliance can also be placed on another judgment of the Supreme Court in **State of Punjab** v. **Madan Lal [(2009) 5 SCC 238]** wherein the majority view in **State of Maharashtra** v. **Najakat [(2001) 6 SCC 311]** has been relied upon.

14. In the instant case, petitioner Sushil Kumar was convicted for two offences in separate trials for attempted murder on a person and murdering another person at two different times. Both these transactions were different in time and separate and were also not interconnected with each other. Therefore, we are of the opinion that this Court cannot interfere with the sentences passed in two separate cases, tried and decided separately under its inherent jurisdiction, therefore, the petition is dismissed.

15. Before parting with the judgment, we would like to record our appreciation to the help rendered by **Shri Anoop Chitkara, Amicus Curiae**.

16. Copy of this judgment be sent to the convict/ petitioner through Superintendent Jail for information.

(Surinder Singh),
Judge.

May 21, 2013.
(rc)

(Rajiv Sharma),
Judge.